IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 21488 of 2006(G)

OS. of 43/04 of SUB COURT, PAYYANNUR

.....

PETITIONER:

L. SUBRAMANI @ SUBRAHMANYAN,
AGED 42 YEARS, S/O. LAKSHMANA GOWDER
PROPRIETOR, RAJA COIR INDUSTRY, RESIDING AT
OLAVARA SOUTH, TRIKARIPUR VILLAGE,
KASARAGOD.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT:

NORTH MALABAR GRAMIN BANK,
REPRESENTED BY MANAGER,
RAMANTHALI BRANCH, KANNUR.

BY ADV. SRI.M.K.SUMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF EA 205/05 IN EP 74/05 DT. 31.10.05 BY THE RESPONDENT**
EXT. P2	**TRUE COPY OF COUNTER STATEMENT IN EA 205/05 IN EP 74/05 DT. NIL BY THE PETITIONER**
EXT. P2A	**TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN EP 74/05 IN OS 43/04 DT. NIL.**
EXT. P3	**TRUE COPY OF ORDER IN EA 205/05 IN EP 74/05 DT. 22.7.06**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 21488 of 2006 G

JUDGMENT

This writ petition is filed by the judgment debtor in O.S.No.43/04 on the file of the Sub Court, Payyannur. He challenges the correctness of Exhibit P3 order, whereby objection to Rule 66 notice filed by him has been overruled by the Execution Court and sale of his residential property sought for by the respondent/decree holder has been allowed fixing the upset price at Rs.5,50,000/-.

2. The objection filed by the petitioner to Rule 66 notice was that he is a labourer and that his residential house shall not be put to auction, as it is exempted under Section 60(1)(c) of the CPC. However, he did not raise any objection as to the value of the property and he did not suggest also as to what will be the value of the property,

according to him.

3. Though the judgment debtor contended that he is a labourer entitled to protection from sale of his residential property, the court below observed that the petitioner, who is the judgment debtor, is described in the execution petition as the Proprietor of Raja Coir Industries, residing at Olavara South, Thrikkarippoor Village and that the same description and address is stated by him in his vakalath as well. He cannot, therefore, contend that he is a labourer. The Execution Court also observed that the decree holder filed an affidavit along with the objection to Rule 66 notice swearing to the fact that the judgment debtor is the Proprietor of Raja Coir Industries. Apart from filing an objection, styling it as a counter, the petitioner/judgment debtor did not file any counter affidavit, traversing the said averments. Exhibit P2 is the objection so filed styling it as a counter. But, it is not in the form of an

affidavit. The averments in an affidavit cannot be countered, except by sworn averments in a counter affidavit. The Execution Court was, therefore, justified in accepting the averments of the decree holder in the affidavit as well to hold that the petitioner/judgment debtor is not a labourer and that his residential property is not exempted from sale, in execution of the decree.

This writ petition is, hence, devoid of merit and is dismissed.

13th February, 2007 (K.P.Balachandran, Judge)

tkv